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Federal Communications Commission
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

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CC Docket No. 95-116

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Telephone Number Portability

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**OPPOSITION OF U S WEST, INC. TO KMC TELECOM, INC.'S
PETITION FOR FURTHER RECONSIDERATION**

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June 11, 1997

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY	1
II. RESPONSES TO SPECIFIC ITEMS	2
A. The Current Petition Is Duplicative	2
III. KMC FAILS TO PROVIDE ANY PROOF OF ITS PUTATIVE FACTUAL ASSERTIONS.....	4
IV. KMC PRESENTS NO EVIDENCE TO WARRANT A FINDING THAT VENDORS WILL HAVE EXTRA CAPACITY AS A RESULT OF THE COMMISSION'S MODIFIED LNP SCHEDULE. FURTHERMORE, ACCELERATION QUESTIONS INVOLVE MORE THAN JUST A VENDOR'S CAPABILITIES	7
V. IF LIGHTER LOADS WERE BEING REALIZED, THERE ARE SOUND PUBLIC POLICY REASONS TO ALLOW THEM TO CONTINUE TO BE REALIZED, UNENCUMBERED	9
VI. CONCLUSION	12

In the Matter of)
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⁵ Reconsideration Order ¶ 107 (“KMC[’s] . . . suggestion that we permit requests for

Second, the “lightened load” KMC repeatedly asserts as the foundation for its current proposal of switch acceleration,⁶ -- a situation which the Commission assumed would develop -- has not materially been recognized, at least not by U S WEST. **Third**, the Petition stems from unproven, and most probably inaccurate, factual assumptions that the Commission’s Reconsideration Order has “created the distinct likelihood of excess vendor capacity before the present deadline of Dec. 31, 1998 for the top MSAs, enabling implementation beyond the top 100 MSAs earlier than otherwise.”⁷ **Fourth**, the Petition seeks to accelerate a LNP deployment schedule that is already very aggressive, and that was “slowed down” by the Commission in its Reconsideration Order because of its aggressive nature, which could potentially create serious problems with respect to industry resources and network reliability.

II. RESPONSES TO SPECIFIC ITEMS

A. The Current Petition Is Duplicative

KMC fails to demonstrate the procedural propriety of its current Petition. It made virtually the same argument in its Petition for Reconsideration of the Commission’s First Report and Order, in the above-referenced proceeding⁸ and the

markets outside the 100 largest [Metropolitan Statistical Areas] MSAs . . . would actually require that those smaller markets be completed at the same time as the MSAs in the last phase of our deployment schedule, thus sharply increasing the burden on carriers during that phase”).

⁶ Petition at 2, 5, 8.

⁷ Id. at 3-4, 8.

⁸ Petition for Reconsideration of KMC, filed Aug. 23, 1996. In the Matter of Telephone Number Portability, First Report and Order and Further Notice of

Commission rejected the position.⁹ There, as here, KMC asked that certain switch deployments be accelerated.

KMC makes the same request now, arguing that the Commission originally determined in the First Report and Order that vendors could meet the aggressive LNP deployment schedule outlined in that Order and that the Commission did not refute or modify its position with respect to this finding in the Reconsideration Order.¹⁰ Thus, KMC argues, the Commission has already found that an earlier deployment of LNP is technically feasible, from a vendor's perspective. Particularly in light of the "lightened load" associated with the revised LNP deployment schedule, KMC asserts, local exchange carriers ("LEC") and vendors should be able to accelerate LNP switch deployment in certain switches outside the top 100 MSAs.

Besides the fact that KMC makes assertions which it contends are material and warrant a change in the current Commission position, which, in fact, are not imbued with the significance KMC contends (as discussed more fully below), KMC fails to address the other material factors that went into the Commission's decision to modify the LNP deployment schedule and to decline to accelerate deadlines for certain MSAs. The Commission's decision was not based solely on what vendors were or were not capable of doing. It also recognized that LECs have resource

Proposed Rulemaking, 11 FCC Rcd. 8352 (1996) ("First Report and Order" or "Order").

⁹ Reconsideration Order ¶ 107.

¹⁰ Petition at 4-5.

limitations on how many switches can be loaded in certain time frames and all of the other associated LNP network and operational support system (“OSS”) work.¹¹

The Commission declined to mandate LNP switch accelerations for a number of reasons, including:

the burden on carriers serving multiple regions and the fact that more significant upgrades may be necessary for carriers operating in smaller areas[;] [and the fact that] the necessary software, hardware, and other resources [might not] be available earlier in areas originally scheduled for later deployment, or [might not] be available in quantities sufficient to support deployment in additional areas, particularly in areas outside the 100 largest MSAs. . . . [A]ccelerating deployment deadlines for smaller MSAs may divert these limited resources from deployment in other, larger MSAs, and thus delay deployment of number portability where a greater population might benefit from competition.¹²

KMC makes no demonstration that the current state of affairs is in any manner materially different than that already considered by the Commission in its rejection of KMC’s previously proffered Petition for Reconsideration.

III. KMC FAILS TO PROVIDE ANY PROOF OF ITS PUTATIVE FACTUAL ASSERTIONS

KMC’s Petition stems from invalid factual assumptions, which lead it to request inappropriate additional LEC responsibilities with respect to the initial deployment of LNP. KMC claims that, by adopting a *bona fide* request (“BFR”) process for switch identifications with respect to the initial deployment of LNP, the

¹¹ Reconsideration Order ¶ 78 (noting that “initial implementation of this new number portability technology is likely to require more time than subsequent deployment once the technology has been thoroughly tested and used in a live environment”), ¶ 84.

¹² Id. ¶ 104.

Commission “lightened” LECs’ implementation obligations.¹³ From this inaccurate factual assertion, KMC then asserts that vendors will now have excess capacity to load software in switches other than those within the top 100 MSAs.

In light of the above, KMC asserts, the Commission should allow competitors to make requests for LNP in MSAs other than the top 100 MSAs targeted for initial LNP deployment. Specifically, KMC recommends that the Commission: (1) modify its rules to provide that the time for compliance with requests outside the top 100 MSAs would run not from December 31, 1998 (as is the current requirement) but from the date of the request, if the request is made after November 1, 1997,¹⁴ unless a LEC obtains a statement from the affected switch vendor that, based on orders already received by it, it does not have sufficient additional capacity to accommodate the request; (2) modify its rules to provide that competitive carriers seeking LNP in MSAs within Phases IV and V of the currently-adopted deployment schedule may make similar requests after November 1, 1997, unless a LEC obtains a statement from the switch vendor, as described above.¹⁵

While it is correct that the Commission, in its Reconsideration Order, observed that its revised initial deployment obligations would allow LECs to better target their resources and would result in “significantly lighter” obligations on them

¹³ See note 6, supra.

¹⁴ U S WEST interprets this to mean that all additional offices could be requested on Nov. 1, 1997, including those offices in the top 100 MSAs that are in Phases III through V, invoking the 30 to 180 day obligations outlined by the Commission in its Reconsideration Order ¶ 66.

¹⁵ Petition at 2-3, 6-7, 9.

than previously mandated,¹⁶ it is not obvious that lighter obligations have been -- in fact -- materially recognized. This is not surprising, since in focusing on the top 100 MSAs, the Commission recognized that this is where competition is most likely to develop first with the largest concentration of competitors.¹⁷

For example, to date, State Commissions and LNP workshops in U S WEST's region have been working to identify the switches desired by new entrants in U S WEST's top ten MSAs (ten of the top 100 MSAs are in U S WEST's region). While polling of the new entrant carriers has not been finalized,¹⁸ based on those States that have completed their initial polling of carriers, it does not appear to U S WEST that there will be more than a handful of host offices not selected for initial deployment.

As the attached Appendix demonstrates, in the preliminary polling for requested offices involved in Phases I through III, only five host switches were not requested in four of the five of U S WEST's MSAs. However, these five offices could still be requested. And, while there is presently insufficient information regarding Phases IV and V to determine whether there will be any significant lessening of the work load, based on the preliminary requests in the early phases (i.e., Phases I through III), U S WEST does **not** expect a significant reduction in the number of switches for initial deployment of LNP.

¹⁶ Reconsideration Order ¶¶ 59, 88.

¹⁷ Id. ¶ 104.

¹⁸ Carriers have until 9 months before the deadline in the deployment schedule for the particular MSA to make requests. Id. ¶ 62.

Furthermore, KMC focuses its "lightened load" argument only on local end-office switches. Yet, significant network upgrades and additions are also required for the signaling network and databases which are required, regardless of the exact number of local switches requested. Thus, at least in U S WEST's case, there will be no materially "lightened load" either on U S WEST or on our supporting vendors.¹⁹

IV. KMC PRESENTS NO EVIDENCE TO WARRANT A FINDING THAT VENDORS WILL HAVE EXTRA CAPACITY AS A RESULT OF THE COMMISSION'S MODIFIED LNP SCHEDULE. FURTHERMORE, ACCELERATION QUESTIONS INVOLVE MORE THAN JUST A VENDOR'S CAPABILITIES.

KMC presents no evidence to support its conclusory arguments that, because of the Commission's modification of the LNP deployment schedule, extra capacity will be available to the vendors. In its First Report and Order, the Commission found that major switch manufacturers would have the capacity to update switch software at a rate of 53 switches per week.²⁰ The information forming the foundation of the Commission's finding, however, cannot be considered an absolute, since it was -- obviously -- predicting a future event. In this regard, the switch update information must be considered no more than an educated assumption. Since then, there has been no record evidence as to whether the vendors can or

¹⁹ In terms of vendor capacity, software loads are only required in stand-alone or host switches, not in the remote switches. Therefore, the fact that remotes are not requested (see Appendix) does not impact the vendors' work load.

²⁰ First Report and Order, 11 FCC Rcd. at 8393 ¶ 77 (referencing an AT&T *Ex Parte* Letter of April 24, 1996 at Attachment 1; and AT&T Comments of March 29, 1996 at 8 n.14), cited by KMC in its Petition at 4.

cannot meet the anticipated work load, especially since requirements continue to increase and be fine-tuned.

Moreover, consideration of whether one or two more offices in smaller MSAs can be added to a Phase because one or two offices were not requested by LECs in the top 100 MSAs is a more complex network planning and deployment question than whether the local switch vendor has one or two open slots for loading software in end-offices' switches. If the additional-requested office is outside of the LATA or State where one of the top 100 MSAs is located,²¹ additional work beyond the mere loading of software in that one local end-office switch is required. For example, it may be necessary to upgrade tandem and operator services switches serving the specific geographic area. Additionally, most OSSs would undoubtedly need modifications, because existing OSSs do not necessarily cover an entire region. Other necessary additions or modifications could include: new LNP Service Control Points ("SCP") for the requested switch area; signaling links and additional trunks would need to be added to the SCP, Service Transfer Points ("STP"), and Service Management Systems ("SMS"); and E911 systems serving requested areas would need to be upgraded. It is also possible, depending on the specific area for the LNP switch acceleration, that the basic switch itself would have to be upgraded or

²¹ For example, deploying LNP in an office in Wyoming would be significantly more impactful than one in Olympia, Washington, which is geographically close to the Tacoma MSA, an MSA slated for LNP deployment in Phase V, and would have similar signaling and trunking arrangements. Even an Olympia-type addition, however, would cause resources that are currently very directed and very focused on the current deployment schedule to be sidetracked, potentially impacting the successful implementation of the current schedule.

replaced. This is not an action that could be accomplished, either from a budget or resource perspective within 1998, with a 180-day “request and deploy” requirement on top of already stretched resources.

The Commission was correct, in its Reconsideration Order, that its current LNP deployment schedule “represents a reasonable balancing of competing interests.”²² That schedule “establishing specific time frames for deployment in all additional switches . . . benefit[s] competitive LECs by ensuring that portability will be available to them at a designated future time, and . . . benefit[s] incumbent LECs by reducing their initial deployment burdens.”²³ Furthermore, the current schedule provides necessary predictability and “certainty [about] . . . the requirements with which [LECs] must comply.”²⁴ U S WEST is currently involved in extensive planning and preparation for the deployment of LNP. It is critical in terms of managing our resources, both labor and costs, to have certainty around the schedule for next year.

V. IF LIGHTER LOADS WERE BEING REALIZED, THERE ARE SOUND PUBLIC POLICY REASONS TO ALLOW THEM TO CONTINUE TO BE REALIZED, UNENCUMBERED

Even if “lighter obligations” were imposed on LECs or were somehow being realized by either them or their vendors, it would not necessarily or logically follow that the lighter obligations somehow create a deployment “vacuum” that now needs to be filled by additional obligations. In tandem with the appropriately reduced

²² Reconsideration Order ¶ 105.

²³ Id. ¶ 65.

²⁴ Id. ¶ 105.

LEC initial deployment obligations, it is equally as "likely" that switch vendors have reduced the frenetic pace which the initial deployment schedule required, and have focused their attentions -- along with their LEC partners -- on making sure that LNP "works" and causes no serious threat to the network. Therefore, the imposition of new obligations would operate contrary to the purposes regarding which the Commission lightened the load in the first place -- limited resources and protection of the network.

U S WEST continues to have grave concerns about network reliability within the context of LNP implementation. As we have advised the Commission, LNP represents "the largest and the most complex change ever made to the public switched telecommunications network."²⁵ It requires the deployment of new hardware and software, including new end office, tandem, and operators services switch generics and the local number portability feature; number portability SCP hardware and software; local SMS hardware and software; E911 system modifications; and an entirely new regional SMS architecture, software and hardware. It fundamentally changes the way carriers route calls through the public-switched telephone network. It also requires modification of virtually all supporting ordering, provisioning, maintenance, repair and billing systems.²⁶ Thus, even if there were some element of reduced obligations or vendor extra capacity, such would not necessarily reduce the time "sufficient . . . to perform necessary

²⁵ See U S WEST Petition for Reconsideration and Clarification, filed herein Aug. 26, 1996 at 3. And see Declaration of Harvey A. Plummer, attached to U S WEST's Reply to Oppositions, filed herein Oct. 10, 1996 at 2-3 ¶ 5 ("Plummer Affidavit").

integration testing among vendors and carriers.”²⁷ The reduced deployment obligations imposed on the LECs was granted, in large part, to allow for the sufficient and quality undertaking associated with such integration and testing. It would not be appropriate, then, to re-consume resources and time that are to be directed to these essential activities. Additionally, since LNP deployment will now be taking place within the factual context of contemporaneous implementation of new local interconnection arrangements, the need for testing becomes all the more critical.

In addition to undermining the potential for greater network assurance and reliability, KMC’s proposal would significantly increase the administrative and regulatory burdens associated with LNP -- an item that is already imbued with a high degree of detail and administrative directives. For example, under the KMC proposal, someone would have to resolve the issue of whether, if one switch is not requested in each of the MSAs for Omaha, Nebraska, Utah (U S WEST), Richmond, Virginia (Bell Atlantic), and Sacramento, California (SBC/Pacific), BellSouth should be required to handle three additional switches in Baton Rouge, even if the vendor could manipulate the extra capacity that might be available. Would the Commission (or some administrative entity) need to determine which competitor gets the vendor’s open slot in which geographical area and with what burden on the carrier serving that area?

²⁶ Plummer Affidavit at 3 ¶ 5.

²⁷ Id. ¶ 6.

As opposed to the above administrative nightmare, the Commission's current approach of allowing private negotiations regarding switch acceleration is clearly the more reasonable.²⁸ Rather than mandate a particular result if a set of facts should, perhaps, materialize in the future, it is clearly more appropriate to leave to negotiations between carriers whether an additional switch outside the top 100 MSAs can be added to a particular Phase. As indicated above, whether such can be accomplished will depend on several factors, including whether the requested additional switch is one close to one of the top 100 MSAs and would not require additional upgrades to tandems, signaling network, operator switches, E911 systems, OSSs, etc.

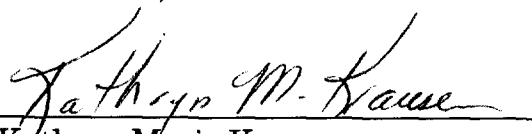
VI. CONCLUSION

For all of the above reasons, the Commission should deny KMC's Petition for Reconsideration.

Respectfully submitted,

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June 11, 1997

²⁸ Reconsideration Order ¶ 106 ("We find, however, that acceleration of our schedule is more properly determined by private agreements among carriers.").

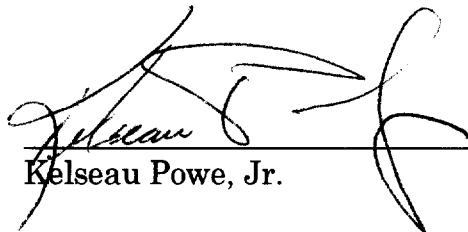
APPENDIX

Current status by Phase of USWC's deployment:

<u>Phase I</u>	Minneapolis, MN	1 of 48 switches not selected 20 of 25 remote switches not selected
<u>Phase II</u>	Phoenix, AZ	Unknown, initial polling not complete
	Seattle, WA	All switches requested (33 switches/ 16 remotes)
<u>Phase III</u>	Denver, CO	All switches requested (37 switches/ 21 remotes)
	Portland, OR	4 of 26 switches not selected 1 of 4 remote switches not selected
<u>Phases IV and V</u>		Polling for these Phases has not been completed, with the exception of the Tacoma, WA MSA in Phase V for which all switches have already been requested.

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 11th day of June, 1997, I have caused a copy of the foregoing **OPPOSITION OF U S WEST, INC. TO KMC TELECOM, INC.'S PETITION FOR FURTHER RECONSIDERATION** to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.



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Last Update: 6/11/97